IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Beerbal Khan Vs. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.236/2007

DATE OF ORDER :: May 10, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.L.D.Khatri, for the petitioner.

Mr.B.L.Tiwari, Deputy Government Advocate.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of order Annexure-1 dt. 1.8.2003 terminating his services.

I have heard learned counsel for the parties.

Facts giving rise to the instant writ petition are that the petitioner along with some others were put to trial for the offence under section 302/149 I.P.C. The petitioner was convicted by the judgment and order dt. 25.7.2003 passed by Sessions Judge, Jaisalmer in Sessions Case No.139/2000. On the petitioner having been convicted, he was removed from service vide Annexure-1 dt. 1.8.2003. The order Annexure-1 is based on the ground that the petitioner has been convicted by the Sessions Judge, Jaisalmer in the aforesaid case.

The petitioner preferred an appeal being D.B.Cr.Appeal No.931/2003, Beerbal Khan vs. State of Rajasthan before a Division Bench of this Court. The Division Bench of this Court vide judgment and order dt. 22.5.2006, allowed the appeal filed by the petitioner, and conviction and sentence awarded to him for the offence under section 302/149 I.P.C. and all allied offences were set aside and he was acquitted of the charges levelled against him. Hence, this writ petition.

It is contended by the learned counsel for the

petitioner that the very foundation for terminating the services of the petitioner i.e. the conviction and sentence stands set aside by the Division Bench of this Court and, therefore, the basis of termination of services of the petitioner no more in existence and, therefore, the petitioner is entitled to be reinstated in service.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat & Anr., **AIR 2006 SC 2129,** wherein the Apex Court held that when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (1999 AIR SCW 1098) will apply. On this premise, the Apex Court set aside the order of dismissal without back wages and held the petitioner therein entitled for the pension.

In this view of the matter, since very basis terminating the services of the petitioner i.e. conviction and sentence awarded by the Sessions Judge has been set aside by the Division Bench of this Court, in my view, the order

terminating the services of the petitioner deserves to be quashed.

In the result, the writ petition is allowed. Order impugned Annexure-1 dt. 1.8.2003 terminating the services of the petitioner is quashed and the respondents are directed to reinstate the petitioner in service with the continuity of service with the notional benefits. However, the petitioner will eligible for the actual monthly salary from the date he joins the duty.

There shall be no order as to costs.

[H.R.PANWAR],J.

m.asif/-